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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,979	11/20/2003	Bernard Strong		8154
7590	11/21/2006		EXAMINER	
MR. BILL LAGAMBA DRUGMAX, INC. 25400 U.S. HIGHWAY 19 NORTH SUITE 137 CLEARWATER, FL 33763			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	
			DATE MAILED: 11/21/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/717,979	STRONG, BERNARD
	<b>Examiner</b>	<b>Art Unit</b>
	Patrick F. Brinson	3754

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 06 September 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 10/18/06.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

#### ***Claim Rejections - 35 USC § 112***

1. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims 1 and 11 recite a hollow port, however this port is closed and therefore is no longer a port in the finished product. Claims 1 and 11 actually recite the product at an intermediate stage of production. Similarly claim 11 recites the proximal and distal ends of the fill port as being selected from elliptical, circular and diamond shapes, however, again the end of the tube is flat due to sealing.

#### ***Claim Rejections - 35 USC § 102***

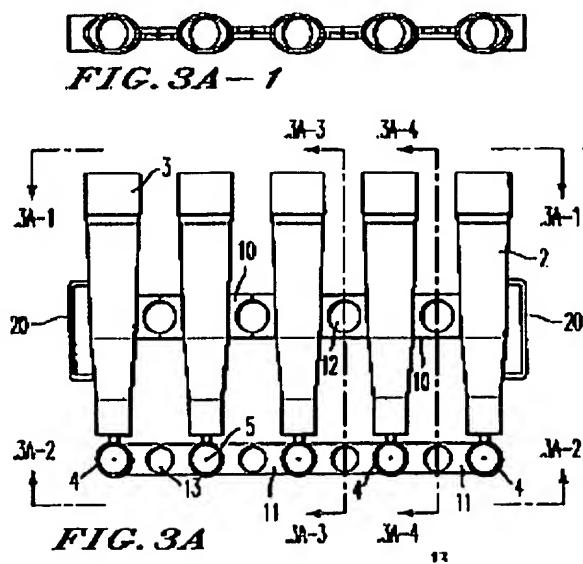
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,116,449 to Chiesi et al.

The patent to Chiesi et al. discloses in fig. 1, a container (2) having a dispensing end (4) and a filling end (3), wherein fig. 3A-1 (see below) best illustrates the filling end having a hollow fill port comprising a circular end proximal to the body and an elliptical end distal to the body, as recited in claims 1 and 11. Additionally, this figure discloses the distal end defining an opening suitable for use in filling the body with a product and the distal end tapers down to the proximal end. The dispensing end (4) comprises a hollow neck in communication with the cavity at the proximal end of the hollow neck with respect to the body and a tip at a distal end of the hollow neck with respect to the body, with the tip comprising a bulb defining a cavity in communication with the hollow neck. The circular end flares out in a generally lateral direction to create the elliptical end, as recited in claim 9, and therefore the elliptical end tapers down to the circular end, as recited in claim 10.



***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

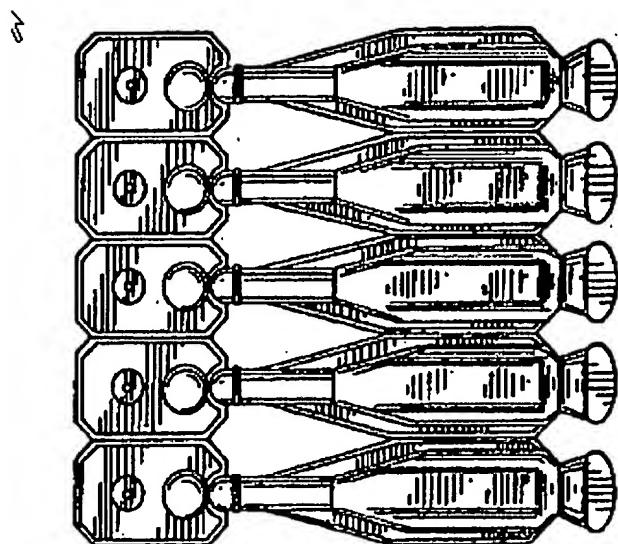
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over D330,160 to **Umekawa** in view of U.S. 4,512,475 to **Federighi**.

The **Umekawa** reference discloses a package of containers, each container including a body defining a cavity (1), the body comprising a dispensing end, and what appears to be a filling end, with the fill port comprising a circular end (4) and an elliptical end (5) distal to the body, as recited in claim 1. The dispensing end comprises a hollow neck (3) in communication with the cavity at the proximal end of the hollow neck with respect to the body and a tip at a distal end of the hollow neck with respect to the body, with the tip comprising a bulb (2) defining a cavity in communication with the hollow neck. The circular end flares out in a generally lateral direction to create the elliptical end, as recited in claim 9, and therefore the elliptical end tapers down to the circular end, as recited in claim 10. **Umekawa** appears to disclose all of the recited structure, but being a design reference, there is no specific disclosure as to the function of the elements listed. The patent to **Federighi** discloses

a dose container (10) including a body portion (11) having a tapered section (13) terminating at its upper end in a cylindrical neck portion (14). The lower end of the body portion is initially open to facilitate filling of a product and after filling is adapted to be sealed by application of heat and pressure to provide a welded seam.

Fig. 1 discloses the end portion (16) flaring out from the body (12) thereby providing an elliptical shaped end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the end of **Umekawa** so as to facilitate the filling of the container with a liquid material, as suggested by **Federighi**, in the event that the end of **Umekawa** doesn't already function as a hollow fill port in order to insert liquid into the container.



***Allowable Subject Matter***

4. Claims 7 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

5. Applicant argues that claims 1 and 11 are not indefinite in reciting structure that is not that of a finished product. It should be noted that the claims are not drawn to a method of making, and therefore the claims are product claims and should be drawn to a product that is operable, and not in an intermediate stage of production. As such the claim that the device has a hollow fill port is not clear. Element (16) may be a fill port, but during operation of the device the port is closed, and therefore not an opening. Applicant argues that the **Umekawa** reference does not teach a port or opening. This point is made in the rejection, since the fluid within the container would not stay within the container if the fill port were not closed, thus making the device inoperable. **Federighi** is merely used to disclose that it is old and well known in the art to seal the end of the container once fluid has been inserted into the container. Regarding the **Chiesi** rejection, **Chiesi** discloses fig. 3A-1 and 3A the fill opening (3) having an elliptical cross-section distal from the body (2) and it tapers down just prior to the body into a circular cross-section as shown in fig. 3A-1.

Applicant points out that the body itself is elliptical, but it can be seen from the figures that the portion of the opening proximal to the body is circular.

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
November 13, 2006